



Environmental
Law Foundation

INTERVENING FOR THE ENVIRONMENT

David Hall CONVERSATION

11th December 2025

Richard Wald KC, 39 Essex Chambers and ELF (Chair)
David Hart KC, 1 Crown Office Row
Carol Day, Leigh Day
Katie de Kauwe, Friends of the Earth
Kate Tandy, Office of Environmental Protection



Interventions in Judicial Review
ELF David Hall Memorial Lecture
11 December 2025

Carol Day
Senior Environmental Solicitor, Leigh Day

LEIGH DAY

What I will cover

- Trends in interventions
- Case studies:
 - *National Farmers' Union v Herefordshire Council*
 - *R (The Dedham Vale Society) v Secretary of State for Housing, Communities and Local Government and Transport UK East Anglia Limited (IP) and Campaign for National Parks (Proposed Intervenor)*
- What can we learn?



Trends in Interventions

- **Pillar of Justice I** – only one application to intervene in an environmental case in the High Court between July 2016 - May 2019 (which was refused)
- Similarly, only one intervention in the Court of Appeal: “*We consider it likely that the introduction of new cost rules for interveners through the Criminal Justice and Courts Act 2015 is a strong reason for the reluctance to intervene*” (RSPB and Friends of the Earth, 2019)
- **A Pillar of Justice II** – recommended amendments to s.87 CJCA 2015 and CPR Part 45 to ensure those intervening in support of the claimant are protected from prohibitive expense (RSPB, Friends of the Earth and ELF, 2023)
- MoJ stopped collecting data on Aarhus cases in 2024
- Between 1 Nov 2023 - 30 Nov 2024, 22 JR judgments (not just environmental cases) in which interventions played a part in the court’s decision making (PLP, 2025)



Trends II

- Number of interventions and the extent to which interveners have been exposed to costs under s.87 CJCA 2015 is unclear - but there appears to have been a chilling effect
- Importance of interventions underlined by The Rt Hon Lord Phillips in his Foreword to the Guide *To Assist the Court: Third Party Interventions in the Public Interest*:

*“Another growth area has been the creation of both governmental and nongovernmental bodies whose role is to protect the public interest in one form or another ... **An important activity of such bodies has been the intervention, to protect the public interest, in actions where this is involved.** Intervention can only take place with the consent of the court in question, but in general the courts have welcomed, and the parties have not challenged, the help that interveners can bring. Often they draw on experience, or knowledge, that the individual litigants do not share.*

In these circumstances I was not the only person dismayed by section 87 of the Criminal Justice and Courts Act 2015. This robs the court of the discretion that it normally enjoys by making it mandatory to award costs against an intervener in a number of specified circumstances. These might well justify a costs order in the discretion of the court but now such order is mandatory, save where there are “exceptional circumstances” that make it “inappropriate”. The most problematic circumstance is where the intervention has not been “of significant assistance to the court”. Clearly this provision could have a chilling effect on interventions ...”

- Certainty regarding level of adverse costs exposure in prescribed circumstances is therefore welcome



National Farmers' Union v Herefordshire Council & Ors [2025] EWHC 536 (Admin)



- Herefordshire Local Plan adopted March 2024
- Policy W3 Minerals and Waste Local Plan - proposals for livestock unit(s) on agricultural holdings must both:
 - provide waste management method statements; and
 - demonstrate “at least nutrient neutrality” if within the River Wye or River Clun Special Areas of Conservation (SACs)
- Reasoning - SACs failing in respect of water quality objectives - substantial contribution to nutrient load arising from agriculture, especially chickens - 24 million chickens (25% UK poultry production) raised in the Wye catchment
- NFU issued JR against Herefordshire Council and the Secretary of State for Levelling Up, Housing and Communities citing five grounds
- River Action intervened on **Ground 1**



National Farmers' Union v Herefordshire Council & Ors (2)

Two related propositions in G1:

- (1) agricultural activities are generally exempt from planning control; and
- (2) agricultural activities subject to non-planning regulatory regimes addressing environmental harm

The court therefore considered:

- (1) whether Policy W3 unlawfully extended the definition of 'waste' in PCPA 2004 and TCPA 1990 by reference to the Waste Framework Directive (WFD); and
- (2) where agricultural activities are regulated by non-planning statutory regimes, whether it can be assumed that those regulatory regimes are operating adequately when determining planning applications or policy

• NFU submitted:

- 'natural agricultural materials' (defined in Art 2(1)(f) WFD) are not waste for the purposes of the WFD because they are not discarded but used in farming; and
- any agricultural material produced is subject to a regulatory regime intended to manage environmental impacts (Farming Rules for Water) so it can be assumed products will not harm the environment (relying on para 194 (201) NPPF)

• RA argued:

- exclusion of waste in Art 2 WFD is made expressly subject to no harm to the environment; and
- assumption that regulatory approaches are preventing environmental harm is contrary to the evidence that the spreading of chicken manure is causing environmental harm - or at the very least the risk of environmental harm (SofS adopted RA's submissions on Ground 1)



The National Farmers' Union v Herefordshire Council & Ors (3)

- Judgment of Mrs Justice Lieven DBE handed down on 10 March 2025 - see:
<https://www.bailii.org/ew/cases/EWHC/Admin/2025/536.html>
- All five grounds rejected

G1:

- Chicken manure can be considered 'waste' if disposal will lead to environmental harm - LPAs can impose more stringent requirements on intensive livestock units which could go beyond existing environmental regulations
- FRfW not operating effectively - the presumption that other regulatory regimes are fit for purpose is a rebuttable one in decisions regarding both specific planning applications and plan-making



CNP and Section 245 Levelling Up and Regeneration Act 2023

- S. 245 Levelling Up and Regeneration Act (“LURA”) 2023 amended:
 - s.85 Countryside and Rights of Way Act 2000
 - s.11A National Parks and Access to the Countryside Act 1949
 - s.17A The Norfolk and Suffolk Broads Act 1988
- Created duties requiring relevant authorities (all public bodies, statutory undertakers and government departments) to “*seek to further*” the statutory purposes of National Parks, AONBs (National Landscapes) and the Broads
- Government’s Explanatory Notes on the Lords Amendments to the Bill for this Act provided that: “*The clause strengthens the duty on certain public authorities when carrying out functions in relation to these landscapes to seek to further the statutory purposes and confers a power to make provision as to how they should do this*” (own emphasis added)
- Duties clearly intended to impose new and more onerous requirements with respect to the statutory purposes than existed before:
 - Broad in scope
 - pro-active
 - Relevant authorities must record the steps taken to demonstrate how decisions comply with the duty



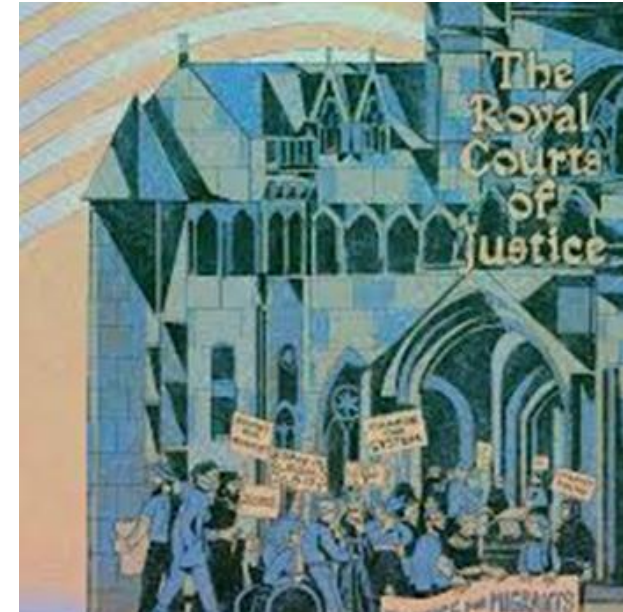
R (The Dedham Vale Society) v Secretary of State for Housing, Communities and Local Government and Transport UK East Anglia Limited (Interested Party) and Campaign for National Parks (Proposed Intervener)

- Manningtree Railway Station is located within the Dedham Vale AONB
- In 2018, Greater Anglia extended the station car park without planning permission or an EIA
- Included a 200-metre wall and lighting affecting the dark sky status of the AONB
- June 2024 - planning inspector retrospectively found in favour of the expansion after the Secretary of State for Levelling Up, Housing and Communities had issued a negative screening direction (no EIA required)
- DVS applied for a JR of the Secretary of State's decision
- December 2024 - CNP granted permission to intervene in support of DVS
- CNP argued strengthened LURA duty relating to AONBs had not been taken into account and evidenced when the negative screening direction was made
- CNP's intervention argued that the strengthened duty could have made a difference to the outcome of the screening direction had it been properly considered
- Secretary of State agreed to submit a new environmental screening decision on the car park expansion



Drawing the threads together

- Interventions provide an opportunity to put legal argument before the court without taking your own case
- Not costs neutral – you will have to cover your own costs (front-loaded) and there is currently a risk of adverse costs (albeit hopefully clarity on the way)
- Intervention must assist the court (e.g. bring expertise, provide important context) – do not simply duplicate what another party is arguing
- A well-argued intervention can be persuasive in that case and make good law (*NFU*)
- It can make a difference in that particular case, even if it doesn't make new law (*CNP*)
- Other interventions may be seemingly neutral (*CG Fry*) although it is never easy to know what might have happened if you didn't intervene!
- Representations pre-permission
- Helpful PLP Guide to Public Interest Interventions:
<https://publiclawproject.org.uk/content/uploads/2025/02/Guide-to-Public-Interest-Interventions-PLP.pdf>





Thank you for listening

Friends of the Earth

David Hall Lecture - Environmental Law Foundation &
39 Essex Chambers

Katie de Kauwe, Senior Lawyer
December 2025



- **Friends of the Earth and the types of cases we intervene in**
- **Interventions in different types of proceedings**
- **Case examples**

Which cases to intervene in?

- Grassroots campaigning organisation
- Working with affected communities
- Strategic priorities
- Can we add value?



Interventions in different types of proceedings

- Most interventions are made in a public law context
- Also occur in private and criminal law litigation
- In public law proceedings, they can occur from first instance onwards
- Criminal law proceedings – from appeal only
- In criminal law trials, other ways can be used to bring in additional information e.g. expert evidence of historian David Olusoga in the Colston 4 trial

Frack Free 3 Sentencing Appeal

- 3 peaceful anti fracking activists convicted of common law offence of public nuisance
- Sentenced to 15 months and 16 months imprisonment
- Friends of the Earth and Liberty intervened in the sentencing appeal
- Written submissions that the original sentencing was disproportionate
- Sentences were quashed on appeal
- Conditional discharges
- Would there have been the same outcome today, however?



Hallam & Others

- Joint intervention with Greenpeace UK
- Length of the sentences of racist rioting in summer 2024
- Chilling effect on peaceful and lawful protest
- Wide remit of the s.78 offence; inflation of sentences not justified
- Conscientious motivation relevant to sentencing
- Proportionality assessment had to be undertaken given exercise of A10 and A11 rights
- Case law from the ECtHR e.g. *Kudrevičius v Lithuania*
- Aarhus Convention relevant to question of proportionality in sentencing



Copyright: Greenpeace UK

The Judgment

- 6 appeals succeeded
- Hallam & Others' sentences: "manifestly excessive"
- Roger Hallam (sentenced to 5 years; reduced to 4 years), Cressida Gethin (4 years; reduced to 2.5 years), Louise Lancaster (4 years; reduced to 3 years), Daniel Shaw (4 years; reduced to 3 years) and Lucia Whittaker De Abreu (4 years; reduced to 2.5 years)
- Gaie Delap's sentence was reduced from 20 months to 18 months – lack of full information to trial judge about her bail conditions
- Important points of principle upheld – improves the law, but peaceful activists still jailed

The Judgment

- **Conscientious motivation** is relevant to sentencing: “*The appellants’ conscientious motivation was a factor relevant to sentencing in each case. It would have been an error for the sentencing judge to conclude on the facts that it had no part whatsoever to play in the sentencing exercise*” [paragraph 26].
- Trial judge “*took no account at all of the appellants’ conscientious motivation*” [81]
- The protestors’ message constituted “**political speech**” - particular respect should be afforded [28]
- **Articles 10 and 11 must be considered** at the sentencing stage, even if a decision is made that those rights don’t provide a defence to the offence [31]
- Protest in a place that public does not have lawful access – still protection under ECHR
- Sunflowers’ case: conduct was shocking but not violent
- Disappointingly: dismissed relevance of views of Special Rapporteur and Aarhus Convention
- Expressed reservation that sentencing comparisons are of assistance when judge sentencing under s.78 PCSCA

'Persons Unknown' Injunctions

- *Boyd – Ineos*' injunction [2019] EWCA Civ 515
- Our submissions cited in relation to the Court's findings on the width and clarity of the original order
- Supreme Court appeal [2023] UKSC 47– *Wolverhampton*; oral and written submissions
- Our submissions cited in relation to concerns over adverse costs
- Interventions can be an important way of challenging the scope of anti-protest injunctions, without taking on enormous cost risk cf *Cuadrilla* case

- Weald Action Group invited Friends of the Earth to intervene
- Intervened in the High Court, Court of Appeal, and Supreme Court
- Planning permission granted in 2019: 6 oil wells - including 4 new wells - that would collectively extract up over 3 million tonnes of oil over 20 years
- EIA – not factored in the emissions from burning the oil; its end-use
- Split judgment in the Court of Appeal, strong dissenting judgment from Moylan LJ



- Our submissions were cited in the majority judgment e.g. Millieudefensise Shell case, referencing the UNEP report
- Moylan LJ endorsed our submissions regarding the purpose of the development: *“As Mr Brown submitted, it is not difficult to describe the combustion of material obtained from a development whose sole purpose is to obtain that material for combustion as being an environmental effect of the development.”*
- His dissenting judgment was an important factor in the case getting permission to appeal to the Supreme Court
- FoE filed submissions supporting the PTA application, and in the onwards appeal itself



Further Information

[Briefing: Court of Appeal judgment on Just Stop Oil sentencing | Friends of the Earth](#)

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Thank you





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